

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

Crl.MC.No. 3477 of 2006()

PETITIONER: 1ST RESPONDENT - 1ST ACCUSED

TONY PYLOTH, S/O.LATE V.L.PYLOTH,
PROTECTOR OF EMIGRANTS, COCHIN. R/O. K.P.IV/56,
'USHAS' ANAYARA, THIRUVANANTHAPURAM.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: PETITIONERS & R2 & R3- A3,A4,A2 & COMPLAINANT

1. NELLIKUNNATH MOOSA,
S/O.MOHAMMED, PROPRIETOR,
M/S.LAVANYA TOURS & TRAVELS (P) LTD., RAVIPURAM,
COCHIN. (PRIVATE PERSON) R/O.NELLIKUNNEL HOUSE,
PANKAJ APARTMENT 1-8-2, CORPORATION OFFICE ROAD,
BEACH P.O., CALICUT.
2. SIDDIQUE, S/O.ABDUL KHADER,
MANAGER, M/S.LAVANYA TOURS & TRAVELS (P) LTD.,
RAVIPURAM, COCHIN. (PRIVATE PERSON)
R/O.PANMANA VILLA, VADAKKUMTHALA P.O. NEAR THE
PANNAYARAKAVI DEVI TEMPLE, KARUNAGAPPALLY TALUK,
KOLLAM DISTRICT.
3. THE SENIOR PUBLIC PROSECUTOR,
CENTRAL BUREAU OF INVESTIGATION,
HIGH COURT OF KERALA, ERNAKULAM.
4. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
SRI. K.C. SANTHOSH KUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 09/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 3477 OF 2006

Dated this the 9th day of November 2006

ORDER

The petitioner, who is the 1st accused in C.C.No. 19/2005 in the court of Special Judge, SPE, CBI -I, Ernakulam has sought for getting quashed the order in Crl. M.P. No. 332/2006 granting pardon to accused 3 and 4. It is the case of the petitioner that the Special Judge has no power to grant pardon under section 306 Cr.PC and that the court has acted without jurisdiction and that in the absence of application by the prosecution the court is not enabled to exercise the power and that the objection of the accused has not been considered. It is contended that the purported exercise of power under section 308 is illegal and even under section 5(2) of the P.C Act the court has to follow the procedure under section 306 (3) Cr.PC. It is only the full and true disclosure of the whole of the circumstances within his knowledge made before the Special Judge that would give him

jurisdiction under section 307 of Cr.PC.

2. The petition is opposed by the SC for CBI.

3. The point raised by the counsel for the petitioners is that there ought to have been a full and true disclosure of the whole of the circumstances within his knowledge related to the offences preceding grant of pardon and according to him, in the circumstances the same has not taken place. According to the counsel, the content of section 306(4) applies even in a case where pardon is tendered under section 307 by the trial court. According to the counsel in the absence of a similar provision to section 306(4) in section 307 the procedure prescribed in 306(4) would imply that the accused should have made a full and true disclosure. It is pointed out that the court below should not have relied on the section 164 Cr.P.C statement of the accused rendered before the Magistrate, to exercise the power under section 307. According to the counsel, the affidavits in support of the application by accused 3 and 4 are hardly sufficient and that the same cannot be described as a full and true disclosure of the whole circumstances within the knowledge of the accused. According to the counsel the section 164 statements recorded

ought not have been relied at all. It is further stressed that in the affidavit in the penultimate portion it is stated that he undertakes that he shall make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence etc.

4. It is pointed out that the above relates to a future contingency and the same will indicate that the full and true disclosure has not been made. On the other hand the counsel for the respondent has quoted the decisions of the Supreme Court in **A. Devindran v. State of Tamil Nadu (AIR 1998 SC 2821)** & **Narayan Chetanram Chaudharay v State of Maharashtra (AIR 2000 SC 3352)** to fortify his contention that s.306(4) will not at all be applicable in cases in which the trial court exercises the power of pardon. It is also pointed out that the true disclosure is a condition on the basis of which that pardon granted will be effective. It is pointed out that in case of departure from the above undertaking or condition section 308 can be invoked.

5. I find that the court below has considered the disclosures made by the accused in the affidavits as well as in

s.164 Cr.PC statement made before the Judicial First Class Magistrate II, Aluva. The Supreme Court in a Devindran's case (supra) has specifically held that section 306(4) will not be applicable in case of exercise of powers under section 307. In Narayan Chaudharay's case (supra) the Supreme Court has specified that recording of two statements, one at the instance of court granting pardon and the other at the trial is not contemplated when power is exercised under section 307. I do not agree with the contention of the counsel for the petitioner that section 164 statement cannot be looked into by the court while tendering pardon. I find that the purport of the provision is that the court granting pardon should have satisfied as to the inclination of the applicant/accused to make a full and true disclosure of the details of the offence. It appears to me that there is no bar for the court to rely on the statement under section 164. The court in the instant case has relied on the detailed affidavit by the accused as well as the statement under section 164 Cr.PC.

6. The other contention is that the accused is not entitled to apply for pardon under section 307. I find that there is no bar

in law that the accused person from making any application before the court with respect to the prayer for granting pardon under section 307.

7. I find that none of the contentions raised as to the alleged illegality of the order of the court in exercising power under section 307 granting pardon to A3 and A4 are sustainable.

8. The counsel for the petitioner has pointed out that the right to question the legality of the section 164 statement should be reserved. The accused will be perfectly entitled to dispute as to the genuineness of the execution of the statement recorded under section 164 at the appropriate stage.

The Crl. M.C. is dismissed.

K.R. UDAYABHANU, JUDGE.

